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In the Supreme Court of the United States

OCTOBER TERM, 1958

LADUE & CO., PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	7

CITATIONS

Cases:

Beck v. *Clark*, 88 F. Supp. 565, affirmed *sub nom. Beck* v. *McGrath*, 182 F. 2d 315 — 5

Clark v. *Uebersee Finanz-Korp.*, 332 U.S. 480 — 5, 6

Cordero v. *United States*, 111 F. Supp. 556, affirmed *sub nom. Cordero* v. *Brownell*, 211 F. 2d 90 — 5

Farmers' Loan & Trust Co. v. *Hicks*, 9 F. 2d 848, certiorari denied, 269 U.S. 583 — 5

Feller v. *McGrath*, 106 F. Supp. 147, affirmed *sub nom. Feller* v. *Brownell*, 201 F. 2d 670, certiorari denied, 346 U.S. 831 — 5

Fujino, Kaname v. *Clark*, 172 F. 2d 384, certiorari denied, 337 U.S. 937 — 5

Ladue & Co. v. *Brownell*, 220 F. 2d 468, certiorari denied, 350 U.S. 823 — 3

Rogers v. *Maron*, 257 F. 2d 622, certiorari denied, 358 U.S. 839 — 5

Stoehr v. *Wallace*, 255 U.S. 239 — 5

Thorsch v. *Miller*, 5 F. 2d 118 — 5

Statutes and executive order:

Joint Resolution of October 19, 1951, 65 Stat. 451 — 6

Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 9(a) — 2, 5

Executive Order No. 9788, October 15, 1946 (11 Fed. Reg. 11981, 3 CFR 1946 Supp. 169) — 3

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 635

LADUE & CO., PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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OPINION BELOW

The opinion of the Court of Appeals (Pet. 1a–7a) is reported at 259 F. 2d 905.

JURISDICTION

The judgment of the Court of Appeals was entered on October 13, 1958 (App. 76)[1]. The petition for a writ of certiorari was filed on January 8, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "App." refers to the appendix in the Court of Appeals.

QUESTION PRESENTED

Whether Section 9(a) of the Trading with the Enemy Act authorizes the recovery of vested property by a claimant which fails to establish that it is the beneficial owner thereof.

STATUTE INVOLVED

Section 9(a) of the Trading with the Enemy Act is set forth at pages 8a–9a of the petition.

STATEMENT

This action was brought under Section 9(a) of the Trading with the Enemy Act (40 Stat. 411, as amended, 50 U.S.C. App. 9(a)) ("the Act"), to recover certain bonds which had been vested by the Attorney General. The District Court dismissed the complaint on the ground that petitioner had not established that it was the beneficial owner of the bonds; the Court of Appeals unanimously affirmed.

Petitioner is engaged in the business of servicing, on commission, securities sent to it by various customers for collection and sale of amounts due thereon (App. 44; Pet. 1a). Gibbon Alonso y Cia, S.A, a Mexican corporation ("the Mexican firm"), was one of petitioner's regular customers. Herman W. Brann is the sole owner of all the stock of petitioner and also is a vice-president of the Mexican firm (App. 44–45; Pet. 1a–2a).

The securities here involved (bearer bonds issued by the St. Louis Southwestern Railroad Company and the City of New York) were sent at Brann's direction by the Mexican firm to petitioner in December 1952 and January 1953 (App. 44–45; Pet. 2a). Mr. Shef-

ner, petitioner's attorney and secretary (App. 44; Pet. 4a), testified that the securities were received by petitioner "with instructions to service them, collect the unpaid interest and to sell the same on the open market, as we did with most of the other securities" (App. 46; Pet. 4a). Mr. Johnson, another attorney for petitioner, wrote the Attorney General on March 31, 1953, that he understood the Mexican firm "are either the owners of all or part of the securities." On the same date, petitioner wrote that the securities are owned by "Gibbon Alonso y Cia." (Pet. 4a).

On February 7, 1952, and April 13, 1953, the Attorney General, as successor to the Alien Property Custodian,[2] vested the obligations represented by the securities in question (App. 30–35). He found that they were property which, since December 11, 1941, and prior to January 1, 1947, was owned or controlled by persons who were enemy (German) nationals (*ibid.*).

In December 1955 petitioner, alleging that at the time of vesting it "was the owner" of the bonds (App. 3), filed this action for their return.[3] After trial, the District Court dismissed the complaint (App. 62).

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[2] Under Executive Order No. 9788, October 15, 1946 (11 Fed. Reg. 11981, 3 CFR 1946 Supp. 169), the Attorney General succeeded to the functions and duties of the Alien Property Custodian.

[3] Petitioner's prior complaint, seeking the same relief, was dismissed because it had not then filed with the Attorney General a notice of claim which, under the Act, must be filed as a condition to maintaining an action for return of vested property, *Ludue & Co.* v. *Brownell*, 220 F. 2d 468 (C.A. 7), certiorari denied, 350 U.S. 823. Petitioner then filed a notice of claim, and instituted this action (Pet. 2a-3a).

The court held (*ibid.*) that in order to recover vested property in a suit under Section 9(a) of the Act, it is "not sufficient that the plaintiff establish that it is the agent of the owner, but it must establish that it is the beneficial owner of the interest sought to be recovered"; and it found (App. 61) that petitioner, who was merely "the agent for the collection of the securities," had "failed to establish (1) who was the[ir] real and beneficial owner" or (2) "acquisition of any beneficial interest" therein.

In unanimously affirming, the Court of Appeals ruled (Pet. 5a) that under the decisions "a plaintiff in an action under Sec. 9(a) * * *, as a prerequisite to the right to recover, must sustain the burden of proving that he is the real owner of the property or, as sometimes said, the beneficial owner. Mere title or possession is not sufficient." The court held (Pet. 3a) that the District Court's findings that petitioner had failed to establish the beneficial ownership of the bonds are "amply supported" by the record. It stated (Pet. 4a):

> [I]t is plain from plaintiff's own evidence that it was not the real owner of the securities and that it, as agent, had title and possession only for the purpose of collection. In fact, there is no satisfactory proof as to who actually owned the securities. It might have been Braun, it might have been the Mexican firm from whom they were received by plaintiff, or it might have been some other party who placed them in the hands of the Mexican firm for collection.

ARGUMENT

The decision of the Court of Appeals that petitioner is precluded from recovering the vested property because of failure to show that it is the beneficial owner thereof is clearly correct,[4] and no question calling for further review is presented.

Section 9(a) of the Act requires a claimant of vested property to establish "the interest, right, title * * * so claimed." As the Court of Appeals correctly held (Pet. 5a), under this provision it is settled that it is "not sufficient" for the claimant to show "[m]ere title or possession." He must also establish that he is the "beneficial owner" (*ibid.*) of the property. *Stoehr* v. *Wallace*, 255 U.S. 239, 246; *Beck* v. *Clark*, 88 F. Supp. 565 (D. Conn.), affirmed *sub nom. Beck* v. *McGrath*, 182 F. 2d 315 (C.A. 2); *Farmers' Loan & Trust Co.* v. *Hicks*, 9 F. 2d 848, 853 (C.A. 2), certiorari denied, 269 U.S. 583; *Kaname Fujino* v. *Clark*, 172 F. 2d 384 (C.A. 9), certiorari denied, 337 U.S. 937; *Thorsch* v. *Miller*, 5 F. 2d 118 (C.A.D.C.); *Feller* v. *McGrath*, 106 F. Supp. 147 (W.D. Pa.), affirmed *sub nom. Feller* v. *Brownell*, 201 F. 2d 670 (C.A. 3), certiorari denied, 346 U.S. 831; see *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 482.[5]

[4] Although petitioner repeatedly states (Pet. 2, 9, 13, 14) that the "undisputed and uncontradicted" evidence shows that the beneficial ownership is non-enemy, both courts below found that the beneficial ownership had not been established.

[5] In certain situations where the claimant necessarily could not be the beneficial owner, such as that of a trustee, it may recover upon showing that the beneficial owners are non-enemies. *Cordero* v. *United States*, 111 F. Supp. 556, 558 (S.D.N.Y.), affirmed *sub nom. Cordero* v. *Brownell*, 211 F. 2d 90 (C.A. 2); see, also, *Rogers* v. *Maron*, 257 F. 2d 622, 624 (C.A.D.C.), certiorari denied, 358 U.S. 839.

Petitioner failed to establish either that it was the beneficial owner of the bonds, or, indeed, who such owner was. As the court below stated (Pet. 4a), "there is no satisfactory proof as to who actually owned the securities. It might have been Brann, it might have been the Mexican firm from whom they were received by plaintiff, or it might have been some other party who placed them in the hands of the Mexican firm for collection."

Petitioner argues (Pet. 6–9, 13), however, that since it was lawfully in possession of the bonds (as agent for their collection), the burden was on the Attorney General to prove that they were in fact enemy owned or controlled. But under such a rule, as the Court of Appeals pointed out (Pet. 6a), "the vesting order could be readily defeated and the purpose of the Act thwarted by the enemy holder of securities placing them in the hands of an American broker or other agency for collection." See *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 485. If petitioner were the beneficial owner of the securities, and not merely their custodian, it could have so shown. As the court below stated (Pet. 6a), "there is nothing unreasonable about requiring the actual or beneficial owner to come into court and establish such ownership as a prerequisite to the right to recover from the Custodian."*

* A proviso to the Joint Resolution of October 19, 1951 (65 Stat. 451), which terminated the war with Germany, stated that any property which prior to January 1, 1947, was subject to vesting or seizure under the Act would continue to be subject to the Act "in the same manner and to the same extent as if this resolution had not been * * * issued." Petitioner contends (Pet. 9) that under this proviso enemy property could not be

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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vested after October 19, 1951, unless it were "shown to be owned by the same German national from prior to January 1, 1947 continuously down to and including the date" of vesting. On its face, however, the proviso does not so provide; on the contrary, its stated purpose was to continue the Government's right to vest enemy property "in the same manner and to the same extent" as theretofore.

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